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DEC 26 2000

OFFICE OF PETITIONS
AND ITS

In re Application of :
Robert M. Blood and Abed Charamand :
Application No. 09/648,947 : DECISION REFUSING STATUS
Filed: August 25, 2000 : UNDER 37 CFR 1.47(a)
For: AIRCRAFT CABIN TELEPHONY TEST :
UNIT :

This is in response to the "Petition Under 37 CFR 1.47(a)," filed October 23, 2000.

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.
Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on August 25, 2000 without an executed oath or declaration and naming Robert M. Blood and Abed Charamand as joint inventors.

Accordingly, on October 24, 2000, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration, and a surcharge for its late filing.

In response, on October 23, 2000, a declaration signed by inventor Blood, but not by inventor Charamand; a five month extension of time fee; the surcharge fee; an associate power of attorney; the instant petition and fee; and a declaration by Thomas M. Isaacson in support of the petition under 37 CFR 1.47(a) were filed.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1), set forth above.

Applicant appears to demonstrate that Mr. Charamand was only presented with the declaration. Unless Mr. Charamand was presented with a copy of the application papers (specification, claims and drawings), Mr. Charamand could not attest that he has "reviewed and understands the application papers" and therefore could not sign the declaration which he was given.

In the declaration by Mr. Isaacson, he stated that a "bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings and oath or declaration) to the non-signing inventor for signature". However, there is no documented evidence to show that Mr. Charamand was presented with the application papers. Mr. Isaacson further states that on July 27, 2000, correspondence (Exhibit C) was forwarded to Mr. Charamand, requesting him to sign the application papers that he had been sent. However, Exhibit C does not show that the application papers were sent to Mr. Charamand. Additionally, counsel states that, on or about August 23, 2000, during a telephone discussion with Mr. Charamand, Mr. Charamand indicated that he would not sign the forms. There was no mention of the application papers.

Accordingly, Rule 47 applicant failed to show or provide proof that the inventor has refused to sign the declaration. Did the inventor receive the application papers? See Manual of Patent Examining Procedure, Section 409.03(d). Petitioner should show that a copy of the application papers was presented to the inventor, but that he did not respond to the request that he sign the oath/declaration in order to show that the inventor has refused to join in the application. **The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events and should include documentary evidence such as certified mail return receipt, cover letter of instructions, telegrams, etc.**

In order to expedite consideration of the petition under 37 CFR 1.47(a), petitioner may wish to consider submitting the renewed petition by facsimile transmission to the telephone number indicated below and to the attention of Karen Creasy.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Special Program Law Office

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision should be directed to Karen Creasy at (703) 305-8859.


Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy